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Semiotics of cultures

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The notion of “description of homosexuality in legislative texts”

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1. Introduction

We start this work by introducing ourselves. We are participants on EMICC (European Masters in InterCultural Communication) Eurocampus 2004. Lucia Würsch has a Bachelor degree in Institutional Communication from the University of Lugano in Switzerland. Tanja Nieminen has completed a Bachelor degree in English language and culture, and after the Eurocampus will continue with her Master programme in Intercultural Communication at the University of Jyväskylä.

In this paper we will discuss the notion of describing homosexuality in legislative texts. We are concentrating on legislation as a culture, on the legislator as a “social actor” and the laws on homosexuality as products of legislation.

The term “homosexuality” is a hybrid linguistic term of the 19th century and comes from the Greek “homo-“ (same) and the Latin “sexus” (gender). The social position of homosexual persons varies in each culture; it can go from adoration, acceptance, and tolerance to non-tolerance, sanctioning and punishment of homosexual activity (<http://de.wikipedia.org/wiki/Homosexualit%C3%A4t>). The attitudes of the society towards homosexuality can be assumed to be explicitly expressed in the legislation of the society, as legal texts are the result of compromise, the “neutral” view of the majority. This is why we are interested in analysing these texts in the Finnish and Swiss context.

First of all, we will discuss this cultural form in relation to different definitions of culture. Then we describe the general features of the legislator as a “social actor”. After this we take a closer look at the legislative systems and legislation concerning homosexuals in Finland and

in Switzerland. In the second section of our work, we focus on the characteristic sign system of the “description of homosexuality in legislation”. We describe the legislative system as related to the five main functions of a sign system. In the third point, we analyse the language culture of this cultural form. We divide this part into discussion of structural, lexical and linguistic topics. Lastly, we focus on the intercultural dimension of our topic. In this part we look at the vision of the cultural “other” and the globalisation trend in legislation.

The material used in this work is based on our own knowledge of the legislation and issues related to homosexuality in our countries. We further searched the Internet for factual information. Our main source of material was the actual law texts, which we have quoted and analysed.

2. Structure and composition of «description in homosexuality in legislation»

2.1 The specific cultural form of “description of homosexuality in legislation”

In order to describe the cultural form of “description of homosexuality in legislation” the link to the four definitions of “culture” (www.semionet.com) can be very helpful. According to the first definition a culture is a system of knowledge and values, which is supposed to be more or less common to a “social actor”. In the case of the “description of homosexuality in legislation” the system of knowledge means, for example, possessing knowledge of specific laws, the history of law making and the political and legal lexicon. In a democracy, the values of legislation are influenced by the values of the majority of the people. In Finland and Switzerland (as they are the focus of our interest) the values reflected by laws are the result of compromise of different values existing in a society. Thus, the law is seen as a neutral but

reflecting the views of the majority. It is interesting to notice that as one of the main functions of culture is to justify, and therefore also, evaluate and sanction the doing and behaviour of the member of “social actor” (www.semionet.com), the laws, as such, are explicitly telling us what are the specific rules for behaviour in the culture in question.

The second definition of culture sees the culture as “a set of cognitive strategies and solutions relevant for the ‘social actor’”. Here we can take the need for an ordered society as an example. In this sense “cognitive strategies” refers to knowledge of lawmaking. Making laws is needed for changing an anarchic society into an ordered one.

Thirdly, culture can be defined as “symbolic capital”, which according to Pierre Bourdieu, (as explained in www.semionet.com) means the social power of a person because of possessing a specific culture. Thus, for example, a legislator has a high position of social hierarchy based on his/her “symbolic capital” of being an expert of legislation procedures and being in the right position to create laws. Rahman (2000:162) explains this with the principles of representative power: “Government is by representative means, through the election of members of political parties and so it is obvious that only *a minority or elite* will be directly involved in agenda setting and decision making.” (Emphasis by the authors.)

Finally, culture can be defined as a historical form, which can be seen as a process evolving through time. As we will see in the case of “homosexual legislation”, the evolution is clearly seen, as together with the change of the shared values of the public, also the laws are changing. In a more general view, law making has its history and traditions that go back to ancient times.

2.2 Characteristics of the legislator as a “social actor”

The concept of “social actor” comes from social sciences. “Social actor” can be said to be any group of people, who share a culture of some sort; they have in common the knowledge and values, activities, language and sign system, objects, territories, environment and history. (www.semionet.com). In our analysis, the “social actor” is the legislator.

In both Finland and Switzerland, the laws are made by the Parliament. The Parliament (community) consists of legislators (“social actors”) – the Members of Parliament. The characteristic activities of these “social actors” are the meetings (e.g. plenary sessions), which are aimed at producing laws. For example, in Switzerland, there are annually four seasonal Parliamentary sessions.

The task of the legislator is to make laws. In this sense, these legal texts are the most typical products for these “social actors”. However, the process of lawmaking produces vast amount of agendas, records of meetings, bills, drafts and other documents, which are necessary for reaching the goal of finished law.

The Parliament of a country is an institution that is based on the democratic foundations of the state. The historical origin is often well known and even something to be proud of, as demonstrated by the web pages of the Finnish Parliament (http://www.eduskunta.fi/fakta/historia/eng/index_1.htm). In addition to this communal history, all “social actors” of this culture have in common the way they have reached their position: they were elected by the people. Both in Finland and in Switzerland, the MPs are elected in a direct secret ballot.

The Members of Parliament mainly work at the House of Parliament, (see figures 2 and 3). The House of Parliament consists of various spaces. These are, for example, the plenary, the cafeteria, meeting rooms and offices of individual MPs. There can be other typical places for the community of MPs, such as the *Café Federal* in the city of Bern, which functions as an informal meeting point for legislators and journalists.

2.3 Laws and legal systems in Switzerland and Finland

In order to understand the basics of legislative culture, in the following chapters we will describe the legislative systems in Finland and in Switzerland and discuss the past and current laws concerning the homosexuals. We will try and stress the way homosexuals as the “others” are portrayed in the legislative texts and how the distinctions are made between “us” – the heterosexual and “them” – the homosexual.

2.3.1 Legislation system in Switzerland

Switzerland is a federal state with 26 sovereign cantons with over 3000 political communes (autonomous self-governing bodies endowed with legal personality). This complex combination of sovereign bodies is reflected in the Swiss legal system. It has resulted in political and administrative responsibilities being split between federal, cantonal and municipal levels of government. The rights and duties of citizens and governing bodies are set out in the 197 articles of the Federal Constitution of 1848-2002. The principal federal organs of government are the Federal Assembly, the Federal Council and the Federal Supreme Court.

Legislative power rests with the bi-chambered Federal Assembly. It comprises the National Council, which consists of 200 deputies elected every 4 years by a system of proportional representation and the Council of States in which one or two deputies represent each canton. The Federal Council consists of seven members, which have the executive power. The Federal Assembly elects the seven Federal Councillors, whose task it is to preside over one of the seven federal departments. Although each canton elects and maintains its own magistracy for ordinary civil and criminal trials, ultimate judicial power is vested in the Federal Supreme Court based in Lausanne.

In Switzerland, laws are proposed by the Swiss Federal Council and have to be accepted by the two chambers of the Federal Assembly. It has to be said that the civil rights of Swiss citizens are wider than in other states. Beside of the election of the Federal Parliament, Swiss citizens have also the right to influence directly on the Federal Constitution (100'000 signatures needed in 18 months) or on the federal law (50'000 signatures needed in 100 days) with the so-called "facultative referendum. The possibility of the facultative referendum makes Switzerland to a "direct democracy". (<http://www.parlament.ch/homepage/sv-services-dummy/sv-ch-schweiz-kurze/sv-ch-staat.htm>)

2.3.2 Legislation system in Finland

Finland is a parliamentary democracy, and thus, the power is vested in the people. The people elect and are represented by the Members of Parliament. The Finnish Parliament consists of 200 MPs. The Parliament has the legislative power with the President of the Republic having a minor role. The Prime Minister and a "requisite number of ministers" form the Council of state, i.e. Government, which is the highest level of Government in Finland. "Judicial power

is vested in the independent courts of law, at the highest level in the Supreme Court and Administrative Supreme Court.”(Laine, 2003)

The process of passing laws usually starts with the Government introducing a bill to the Parliament. It is also possible for individual Members of Parliament to propose legislation and they often do so. (Ibid.) For example, in the case of same-sex partnerships in Finland the first bill for law was made by MP Outi Ojala in 1993. It took nearly ten years and many further legislative proposals including a bill by the Government in 2000 before the law was passed in 2002. (Jantunen, 2003) To be passed as a law, the bill has to be supported by the majority of Parliament and be signed by the President of the Republic (Laine, 2003).

2.3.3 History of legislation on homosexuality in Switzerland

The issue of homosexuality can hardly be found in Swiss historical texts. It presented a taboo and neither the (Catholic) Church nor the State had mentioned it until the end of the 20th century (Hubschmid, 1996). But as a result of investigations, around 5% -10% of the Swiss population, 350'000 to 700'000 persons are homosexual. (<http://www.los.ch/artikel/artikel.php?ID=260&rubrik=44>). Even if nowadays, the Swiss society shows more acceptance towards homosexuals, life as a lesbian or a gay person is still considered to be difficult.

The association “derBUS” has organized a touring exhibition with the aim to increase tolerance and comprehension of the Swiss people towards homosexuality. According to “derBUS”, there exists actually no Swiss law, in which homosexuals explicitly would be discriminated, but the inequality in legislation arises by loopholes in the law. (Ibid.)

2.3.4 History of legislation on homosexuality in Finland

As the values of Western world have long been based on Christianity, homosexuality has been viewed negatively throughout Europe. This has been also the case in Finland. This negative evaluation has been reflected in the laws. In the penal code of 1889 homosexuality has been categorised as a crime and this section (12 of Chapter 20) was valid until 1971. However, when the act was repealed in 1971, a new section was added to the law to criminalize the public exhortation to homosexual activity. This section was abolished only in 1999. (<http://www.join.fi/seis/koulutusmateriaali/03/02.shtml>)

In 1995 there was a radical change in the legislation related to homosexual issues as in the amendment of penal code it became a crime to discriminate against homosexuals. In March of 2002 the new law about same-sex partnerships came into force. This law enables same-sex couples to register their partnership, and thus, gives them mostly the same rights and duties as those of a married heterosexual couple. The law restricts the homosexual couple from adopting as a couple and also from having a common surname (ibid.).

2.3.5 Laws concerning homosexuals in Switzerland

The starting point of the deeper analyse is the Federal Constitution, the basis of the Swiss legislation system. In Art.8 about “Equality before the law”, in paragraph 2, one can read:

Federal Constitution of the Swiss Confederation (of April 18, 1999)***Title 1: General Provisions******Art.8 Equality before the law***

- 1 All human beings are equal before the law.
- 2 **Nobody shall suffer discrimination, particularly on grounds of origin, race, sex, age, language, social position, lifestyle, religious, philosophical and political convictions, or because of a corporal or a mental disability.**
- 3 Men and women have equal rights. Legislation shall ensure equality in law and in fact, particularly in family, education and work. Men and women shall have the right to equal pay for work of equal value.
- 4 Legislation shall provide for measures to eliminate disadvantages affecting disabled people.

Although “sex” is mentioned, it has not the meaning of “sexual orientation”, but of the gender equality of individuals. Homosexuality is not mentioned in the Swiss Constitution.

By focusing on the three different law codes in Switzerland, civil code, obligation code and penal code, there can be found at least two cases where homosexuality is mentioned. First, one can find the notion of homosexuality in the Penal Code in the “Strafverfolgung in der Ehe und in der Partnerschaft” (Prosecution in marriage and in partnership concerning violence in relationship) of October 2003. In Art. 66^{ter}4, it is stated, “wenn das Opfer der Ehegatte oder der hetero- oder homosexuelle Lebenspartner...ist” (if the victim is the husband/wife or the hetero- or homosexual partner).

Second, one can find in the Civil Code the law of October 2003 about the “Registered partnership of same-sex couples” (see figure 4), which regulates its founding, impact and the dissolution. What in daily life often is called “gay marriage” is described in this legal text with “Zwei Personen gleichen Geschlechts” (two persons of the same sex) and “eingetragene Partnerschaft gleichgeschlechtlicher Paare” (Registered partnership of same-sex couples). It

has to be said that this law is only a draft. In fact, on October 7th 2004 more than 50'000 signatures had been deposited at the Federal Office in Bern. Mostly the catholic and more conservative parties accuse the homosexual partnerships not to be morally right. The Referendum demands an obligatory vote of the issue by the sovereign, which are the citizens of Switzerland.

The explicit notion of the sexual orientation of the victim in the first case is very interesting and does not correspond to the terminology used in the second case about the registered partnership. One can conclude that Swiss law uses the terms “same-sex partnership” and “homo- or heterosexual partner” to describe homosexuality in law.

2.3.6 Laws concerning homosexuals in Finland

During the past few years, two new laws have been passed in Finland, which concern sexual minorities: the Equality Act and the Law on Registering Same-Sex Partnerships. Although discrimination based on “sex, religion, ethnicity... or sexual orientation” is already labelled as a crime in the penal code, there was a special “yhdenvertaisuuslaki”, Equality Act passed in January 2004 (http://www.join.fi/seis/pdf/yvlakiesite_en.pdf). That there was a need for such a law already tells us that there is discrimination despite the earlier laws against it. The law forbids discrimination based among other things “sukupuolinen suuntautuminen”, the sexual orientation (for a discussion on this term in the Finnish language, see section 4.3) (ibid.).

Another remarkable law for the Finnish homosexual community is the law on same-sex partnerships. This law allows two persons of same sex, who are at least 18 years old to register their partnership. (<http://www.seta.fi/fi/setafi6421.htm>) There are certain similarities

that can be drawn between same-sex partnership registering and civil wedding. Both are done at the magistrate. For both same-sex partnership registering and marriage, the age limit and blood tie limitations are the same. In neither is any explicit assumption made (naturally there are always culturally embedded assumptions) about the (marriage) partners' sexual orientation.

However, if we look the actual process of marrying or registering at the magistrate, we can notice clear distinctions. Implicit as they may be they clearly send the message, same-sex partnership should not be taken as equal with marriage. As from the examples below you can see, in the civil marriage, two witnesses are present. This is not the case in the registering of partnership. Furthermore, though people may view the civil wedding a plain occasion, it is nothing compared to the registering of a same-sex partnership. In the case of marriage, the official utters the purpose of marriage and asks the marrying partners if they wish to marry each other, whereas in the registering situation the partners are simply given a document to sign.

The civil wedding

9 § of the Wedding Law

Siviilivihkiminen toimitetaan siten, että vihkijä todistajien läsnä ollessa lausuu avioliittoon vihittäville:

"Avioliiton tarkoituksena on perheen perustaminen siihen kuuluvien yhteiseksi parhaaksi sekä yhteiskunnan säilymiseksi. Avioliitto on tarkoitettu pysyväksi, jotta perheen jäsenet voisivat yhdessä luoda onnellisen kodin.

Näiden todistajien läsnä ollessa kysyn Teiltä (miehen nimi): Tahdotteko ottaa tämän (naisen nimi) avioaimoksenne rakastaaksenne häntä myötä- ja vastoinkäymisissä?

(Vastaus: Tahdon)...

Civil wedding is completed so that the official marrying the couple in the presence of witnesses says to the marrying couple:

“The purpose of marriage is to start a family for the best of those involved in it and for the survival of our society. Marriage is meant to be permanent, so that the family members could together create a home filled with happiness.

In the presence of these witnesses, I ask You (man’s name): Do you want to take this (woman’s name) as your wedded wife to love her both in joy and sorrow.
(answer: I do)...

(FINLEX: avioliittoasetus)

Registering a same-sex partnership

5§

Parisuhte rekisteröidään siten, että parisuhteen osapuolet 4 §:n 1 momentissa tarkoitetun viranomaisen läsnä ollessa yhdessä allekirjoittavat rekisteröintiä tarkoittavan asiakirjan ja viranomainen samalla vahvistaa sen allekirjoituksellaan.

The partnership is registered so that the parties of the partnership in the presence of the official mentioned in the subsection 1 of 4 § together sign the registering document and the official verifies it with his or her signature.

(Laki rekisteröidystä parisuhteesta)

3. The characteristic sign system of “description of homosexuality in legislation”

3.1 The Five functions of the legislation sign system

When we are talking about the description of homosexuality in legislation, we have to refer to the sign system of legislation in general. The sign systems can be categorised into five different functions (www.semionet.com). The first function is communication and information exchange purpose. In the case of legislation, laws are used to communicate the rights to the people of a certain country. The legal texts usually are public and can be read by everyone. This reflects the transparent nature of laws in these countries. Furthermore,

legislation as formulation of laws is a complicated communication process, which includes such actions as, presentation of ideas (introducing bills) and debating.

Second, sign systems can fulfil an identity function. This is often manifested in symbols. The most common symbol for law is Themis, the divine goddess of justice (a blindfolded woman holding a set of scales) from ancient Greek mythology (Swatt). (see figure 1.) Furthermore, also the building, the House of Parliament, can be seen as a symbol. The biggest Finnish newspaper, “Helsingin Sanomat”, listed “Eduskuntatalo”



Figure 1: Themis

(the Finnish House of Parliament) as one of the major pieces of art symbolising the independent of the Republic (Heikkilä, 1997). In the Swiss Parliament hall, there is a wall painting depicting the prairie, where according to a legend Switzerland was founded in 1292. This painting has become a symbol of identity of Swiss people.

In addition to symbols there are other objects that constitute to the identity of the legislators. For example, there are more or less explicit rules about the dress code for members of Parliament (e.g. suit and tie for men). However, at least in Finland and Switzerland, this type of dressing is not limited to legislative culture, but is actually similar to the dress code of business people. Furthermore, the temporal structure of handling the work in Parliament (e.g. seasonal sessions, daily agendas) serves an identity function as something unique to this type of cultural form.

The third function of sign system focuses on preservation, reproduction and historical transmission purposes. From the historical point of view, legislation can be seen as long, continuous process. As the legal texts are written “contracts”, they can be changed only

through special procedures. Thus, it is perhaps not surprising that a section criminalizing homosexuality existed for almost a hundred years in the Finnish penal code before being abolished in 1971 (<http://www.join.fi/seis/koulutusmateriaali/03/02.shtml>). There are also historical figures, who, while laws can be changed, will always serve as the foundations on which the legislation is built. Such a figure is, for example, Wilhelm Tell for Switzerland as the founder of the country.

Fourth, sign systems are used to delimitate and demarcate a territory. The meaning of “territory” in the Swiss legislation context can be divided up in “public territory” (the four seasonal sessions in Switzerland) where the doors are open to the public audience and media and “private territory” where Members of Parliament work behind closed doors (the phase of law preparation). Another territorial distinction can be made between “professional” and “miliz”. While the Finnish Parliament is a professional one, the “miliz” system is used in Switzerland. That means that all Swiss Members of Parliament have their own job (own professional territory) outside of the Parliament and join the “territory of the Parliament” only for the four sessions or the preparation of it. The name “miliz” (=militia) refers to the Swiss military, where the same system of employment is used.

Furthermore, the Parliament as the legislation instance acts on a political territory with people of different opinions. In addition there has to be mentioned the “physical territories”, such as the actual building, which is the House of Parliament (see figures 2 and 3). Nowadays strict security rules are used to protect this area and thus the territory has limited access.



Figure 2: The House of Swiss Parliament



Figure 3: The House of Finnish Parliament

The fifth function focuses on sign systems, which are used for meta-purposes, i.e. a culture reflecting itself and its identity. In the case of legislative culture, there exist different levels of information. The laws themselves prescribe how people should behave in their daily life and therefore laws represent a meta-level of reality. But there are not only laws but also laws about lawmaking, such as the constitution of the different states, which prescribe how the democratic system should work. In this perspective, the state constitutions have a meta-meta-level. In the member states of the European Union it might go one step further; there might be a European Constitution above the constitutions of the different member states.

4. The language culture peculiar to “description of homosexuality in legislation”

4.1 Structure in legislation texts

In our case we are dealing with the legislation language. By approaching the legal texts from a linguistic point of view, one can notice the use of a specific structure of the legal texts and lexicon. The Swiss Federal law and the Finnish law are divided up in sections, chapters,

paragraphs, articles and other such parts. The following examples (see figure 4) will show this structure more clearly:

<p>Bundesgesetz <i>Entwurf</i> über die eingetragene Partnerschaft gleichgeschlechtlicher Paare (Partnerschaftsgesetz)</p> <p>vom</p> <hr/> <p><i>Der Bundesversammlung der Schweizerischen Eidgenossenschaft,</i> gestützt auf die Artikel 38 Absatz 2, 112 Absatz 1, 113 Absatz 1, 119 Absatz 2, 121 Absatz 1, 122 Absatz 1, 123 Absatz 1, 128 Absatz 1 und 129 Absatz 1 der Bundesversammlung, nach Einsicht in die Botschaft des bundesrates vpm 29. November 2002, <i>beschliesst:</i></p> <p>1. Kapitel: Allgemeine Bestimmungen</p> <p>Art. 1 Gegenstand Dieses Gesetz regelt die Begründung, die Wirkung und die auflösung der eingetragenen Partnerschaft gleichgeschlechtlicher Paare.</p> <p>Art. 2 Grundsatz 1 Zwei Personen gleichen Geschlechts können ihre Partnerschaft eintragen lassen. 2 Sie verbinden sich damit zu einer Lebensgemeinschaft mit gegenseitigen Rechten und Pflichten. 3 Der Personenstand lautet: «in eingetragener Partnerschaft».</p> <p>2. Kapitel: Die Eintragung der Partnerschaft</p> <p>1. Abschnitt: Voraussetzungen und Eintragungshindernisse</p> <p>Art. 3 Voraussetzungen 1 Beide Partnerinnen oder Partner müssen das 18. Altersjahr zurückgelegt haben und urteilsfähig sein. (...)</p>	Title of the section
	Date (missing)
	Introduction
	Chapter 1
	Article 1
	Article 2
	Chapter 2
	Paragraph 1
	Article 3

Figure 4: Federal law about registered partnership

4.2 Terminology in legislation of homosexual

In addition to the specific structure, one can mention the very particular vocabulary of legislation. The phrase “Der Personenstand lautet: «in eingetragener Partnerschaft»” (Chapter 1, Art. 2, Paragraph 3) (Personal status is “in registered partnership”) presents an example of

this specific vocabulary. In a more common language one would rather say “same-sex marriage” or “gay-union”.

To answer the question why the law is written in such a formal language, it can be linked to Osmo A. Wiio who said, “communication fails always, except by accident” (Korpela, 2003). This view of communication implies that what people mean is not same as what others interpret it to mean. Also in common language such problems occur and sometimes people choose to interpret others’ words wrongly on purpose. However, compared to common language, in law texts, the words have to be carefully selected to avoid ambiguity and guarantee same interpretation by all. Of course, in some autocratic states one might wish to leave law texts ambiguous so that the dictator could have the last say in the interpreting. In Finland and Switzerland, however, this should not be the case.

4.3 “Sukupuolinen suuntautuminen” (gender orientation)

In the Finnish equality laws the term “sukupuolinen suuntautuminen” (gender orientation) is used to describe sexual minorities (namely gays, lesbians and bi-sexuals). However, this term is debatable and SETA, (Sexual Equality in Finland) association for sexual minorities in Finland, has tried to influence the Legislators to change the term to “seksuaalinen suuntautuminen” (sexual orientation). The problem in language terms is that in Finnish “sex” (biological) and “gender” (social) are both translated as “sukupuoli”. From this point of view “sexual” could translate into “sukupuolinen”. However, in the context “sexual” is used to mean sex as activity and not as gender. Thus, the right translation would be “seksuaalinen”. Surely, with whom people decide to have sex, does not have so much to do with how they perceive their gender, as “sukupuolinen” would imply. Or so one can argue. In the

heterosexual matrix of our society, being of certain sex/gender is usually associated with certain type of sexual activity.

Another problem is that the term “sukupuolinen suuntautuminen” could be interpreted as referring to transsexuals, as the words actually say “gender orientation”. (<http://keskustelu.seta.fi/viewtopic.php?t=946>) However, this has been proved not to be the case. If we take the law literally it would give protection to transsexuals, where in fact they are without any particular legal protection (Hiltunen, 2002:13).

What is perhaps more interesting is the cause of the term debate. At the beginning of the 1990s it was SETA who asked the legislators to use the term “sukupuolinen suuntautuminen”, because they wanted to take the public’s attention away from overly sexualising the identity of the homosexual. Now, after ten years, the views and motives have changed again and debate over right terminology follows. The Parliament has so far decided to leave the term unchanged, as they feel the term is already quite popularly used in other legislative texts and they feel its meaning is clear. (<http://keskustelu.seta.fi/viewtopic.php?t=2011>)

However, although the meaning of words are often negotiated and renegotiated (for example, the word “negro” was once a quite harmless and descriptive term, whereas nowadays considered pejorative), what is interesting about legislative language is that there are still valid laws, which were passed a hundred years ago and in these texts, the lexical items remain untouched. Thus, there are words in these laws that no one would use anymore and people really have to be experts of law (or maybe linguists) in order to understand the meaning of these laws.

4.4 Linguistic registers

Considering diglossic schema in the culture of legislators, one can identify easily two or more language registers, the common language and the legal and political jargons. Which register is used usually depends on who the communication is directed to and what intentions it serves. If for example, the legislator wants to create an image of highly educated politician, s/he can use the political jargon. Often the lay people might view this negatively, in that they feel politicians are using difficult language on purpose in order to avoid answering the real questions.

The Swiss legislation has been written down for the first time in 1848 and since then changes and attributions have been made by the Parliament. The spoken legislative language is based on these written texts. Naturally when laws are debated, the spoken language will resemble more the “common” language than the written law text but the use of some perhaps archaic terms of law language is one feature of legislators’ jargon. Furthermore, in the oral expression good rhetorical skills are needed in order to be a convincing speaker.

4.5 Multilingualism in legislation

The legislating cultures of both Finland and Switzerland are multilingual. In Switzerland one has to differentiate between federal and cantonal laws. On the federal level, the laws are written in all of the three official languages: French, German and Italian. On the cantonal level, the language of the legislative text depends on the official languages in the specific canton. In the Parliament the laws can be debated in all of the three official languages, as simultaneous interpretation is available. In Finland the laws are written in the official

languages, Finnish and Swedish. As all Members of Parliament are expected to know both official languages, either one can be used as a working language.

In the case of legislation language, one can hardly detect creolised language forms. There is no population speaking only the “legislative language” and thus there can be no pidginisation (when people speaking two languages come together) between legislators and lay people, nor creolisation (when offspring of the two populations grow up speaking the pidgin as a mother tongue).

4.6 Interpretation of the law texts

Even though there can be a possibility of various interpretations of law texts (as seen in the discussion on “sukupuolinen suuntautuminen” at section 4.3), they are usually written in the most formal and explicit way. An example of the explicitness of law texts is the article on “limitations of registration” (article 4, 1st Paragraph, Chapter 2) in the Swiss bill for registering same-sex partnerships: “Verwandte in gerader Linie, Geschwister sowie Halbgeschwister können keine eingetragene Partnerschaft eingehen.” (Relatives in a direct line; either siblings or half-siblings cannot be registered in a partnership.) This example shows, that the term “Relatives in direct line” is explicitly defined, and thus there is no room for other interpretations.

5.The intercultural dimension in the “description of homosexuality in legislation”

5.1 Vision of the cultural “other” by the legislators

The crucial question in this part is to find out how the cultural “other”, in this case the homosexual person, is seen by the legislator and is described in the law. When analysing the wording of Finnish and Swiss legal texts, we noticed differences in terminology. For example in the Swiss penal code about violence in partnership, one can find the terms “hetero- oder homosexuelle Lebenspartner des Opfers” (heterosexual or homosexual partner of the victim) (Strafgesetzbuch, Strafverfolgung in der Ehe und in der Partnerschaft). The Swiss penal code differentiates in this case between “Ehegatten” (wife/husband) and “hetero- or homosexual partner”.

In the Finnish law, terms such as “homosexual” do not exist. The law against discrimination says it is criminal to discriminate against a person based on for example, sexual orientation. However, both in Finland and Switzerland the law (or a bill in the Swiss case) to register same-sex partnership talks only of “same-sex partners”. No assumption about the partners’ sexual orientation is made. This is a current trend and it is conscious decision by the legislators to avoid forcing labels on people; a person, we could describe as “homosexual”, might not like to identify him- or herself with this term (<http://keskustelu.seta.fi/viewtopic.php?t=2011>).

The “other” for the legislator can also be the lay person: the citizen. Citizens can be active and arrange movements to lobby their cause to the Parliament. Further, in Switzerland people can collect signatures to get a right to a referendum. In Finland referendum is a rare case, there

have only been two referendums in the whole history of the Republic of Finland. The referendum is always only advisory; the Parliamentary does not need to do as the people vote. To arrange a referendum a “law about organising a referendum” must be passed. (<http://www.vaalit.fi/15896.htm>) The active group of citizens can naturally consist of gay human right activists. In Finland, SETA (Sexual Equality in Finland) has been active on this field; they arrange demonstrations and campaigns and give training on sexual equality issues.

The organising of sexual minorities into activist groups is a global phenomenon. Through media publicity many of us are familiar with Gay Pride movement from the parade arranged in several countries. As with every global movement, the gay and lesbian associations use Internet to communicate globally and to create a feeling of community. There is for example the International Lesbian and Gay Association, (www.ilga.org), which fights globally for the rights of homosexuals. Rahman (2000:152) further stresses the effect of visibility to the possibility of changes in the public views. If sexual minorities stay hidden, they will not have to be tolerated and people can easily stick to their prejudices. “[B]eing publicly present – in popular culture, Gay Pride marches, political campaigns or legal challenges – does contest the understanding of homosexuality as shameful, hidden and secret. (Ibid.)”

5.2 Globalisation in legislation

Nowadays, we have not only laws related to the state, but also to unions of states. For example, in the European Union there are laws that are valid in all the member states. In the Draft Treaty Constitution for European Union (<http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>, emphasis by the authors), there is an article prohibiting discrimination based, among other things, on “sexual orientation”:

TITLE III: Equality***Article II-21: Non-discrimination***

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or *sexual orientation* shall be prohibited.

There are also “universal” laws, such as the Human Rights signed by 191 states in the United Nations. The “Universal Declaration of Human Rights” does not mention sexual orientation at all. According to the second article “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*” (<http://www.un.org/Overview/rights.html>, emphasis by the authors). In this sentence, sexual orientation must be included in “other status”.

However, this is clearly not enough, as we can see that in some countries homosexuals are widely discriminated against and the organisations of gays, lesbians, bisexuals and transsexuals of these countries are appealing to the UN in order to get their rights stated in the declaration for human rights. Such is the case with the Johannesburg Statement, which asks African member governments of the United Nations Commission on Human Rights and of the United Nations to support a resolution before the Commission on sexual orientation, gender identity, and human rights. (http://hrw.org/lgbt/pdf/joburg_statement021304.htm)

The global – or at least European - orientation to increase rights of the homosexuals can be noticed also in the similarities of Swiss and Finnish laws. Both countries have laws against discrimination, and whereas Finland has had the law for registering same-sex partnerships for two years now, Switzerland is at this very moment trying to introduce this law. The difference

might very well come down to the “other”: lay people have more power with the referendum in Switzerland than the active citizen (who can basically only demonstrate) in Finland. In Switzerland, the law will be given a referendum but in Finland, the law was “simply” passed by the Parliament with 99 votes saying yes against 84 saying no. (<http://www.seta.fi/fi/setafi6425.htm>) This seemed to happen without much influence of the pro- and anti-demonstrators outside the House of Parliament. Apparently the Swiss Parliament might be ready to say the same, but in Switzerland the decision is in the hands of the people.

6. Conclusion

As from our analysis of legislative culture in Finland and in Switzerland and from the description of homosexuality inside these cultures, one can notice, there is a global trend towards of giving more recognition to this particular minority group. The “other” is becoming more tolerated, even protected. (Though, we would like to stress that this is in legislation, not necessarily in everyday life. If the “other” was always equal, there would not be need for such laws.)

Both in Switzerland and Finland, the legislators have the tasks of passing laws that would reflect the views of the majority and also have the special focus on how to express the ideas to avoid ambiguity. As we have seen, this task is not always particularly easy. How a certain community interprets the “other”, becomes explicit in the laws they make concerning the “other”. That homosexual union is not considered a marriage in Finland, becomes clear from the wording of the law describing it and the differences which are made between the two. The

actual words used to describe the other are also important. Saying “homosexual” or “same-sex partner” already makes some assumptions of the “other”.

As seen from the example of “sukupuolinen suuntautuminen” (sexual orientation), the argumentation can be various and even change with time. We did not discuss the validity of different arguments and we feel this task can only be solved in the culture where the question of terminology arises. The legislators will have to keep considering the wording of the legislation in order to produce unambiguous laws that describe the “other” in non-stigmatising manner. Asking the opinions of the “other” (as in the case of Finnish SETA) is not at all a bad way to start.

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